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May 7, 2012

FILED VIA ECF

Hon. Karen M. Williams
Mitchell H. Cohen Building & U.S. Courthouse
4th and Cooper Streets, Rm. 2040
Camden, NJ 08101

**Re: *Steamfitters Local 449 Pension Fund v. Central European
Distribution Corp., et al.***

Civil Action No.: 11cv06247

AND

Tim Schuler v. Central European Distribution Corp., et al.

Civil Action No.: 11cv07085

Dear Magistrate Williams:

We represent lead plaintiff movant Prosperity Group in the above-captioned actions and submit this response to the competing movant the Arkansas Public Employees Retirement System and the Fresno County Employees' Retirement Association's (hereinafter, the "Retirement Group") submission attaching a recent opinion from the District Court of the Northern District of California, *Fish v. Netflix, Inc., et al.*, No. 12-1030 (N.D. Cal. April 26, 2012) ("*Netflix*"). Dkt No. 35 & 35-1 (May 3, 2011). *Netflix* does nothing to support the Retirement Group's arguments, but rather confirms that the Retirement Group's motion should be denied.

In *Netflix*, the Court found that a member of the lead plaintiff movant, the Fish Group, did not reveal that she was not the true legal entity holding the Netflix stock at the time its original motion papers were filed. *Netflix* at 11 ("The Comstock Trust does not appear in the Fish Group's initial motion and did not assign its claims to [Nancy] Comstock."). The Court found that "this may raise a colorable issue of whether Comstock herself, as a legal entity distinct from Comstock Trust, has standing to bring a claim. Thus, even if the Court were to aggregate the Fish Group's members' individual claims, the Fish Group would not satisfy the PSLRA typicality argument." *Netflix* at 11-12. This is not the case with the Prosperity Group. All of the legal entities that comprise the Prosperity Group were not only identified in the Prosperity Group's initial papers, but also moved for appointment as lead plaintiff, and thus satisfy the standing requirements under both *Huff* and the current majority case law in this

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Circuit. *See* Dkt No. 10 (Prosperity Group's Memorandum in Support of Motion for Appointment as Lead Plaintiff, at 1 n.2); Dkt. No. 33 (Prosperity Group Reply Memorandum, at 1 n.1, 3-10).

Furthermore, the facts in *Netflix* are clearly distinguishable from the circumstances surrounding the instant motions for lead plaintiff. In *Netflix*, the Fish Group claimed to be the presumptive lead plaintiff with the largest financial interest based on the aggregated losses of its three individual members. In denying its motion for lead plaintiff, the *Netflix* Court declined to aggregate the losses of an unrelated group of individuals, finding that "[t]he Fish Group has made no showing of former ties or current cohesion" and, hence, did not have the greatest financial loss to be appointed lead plaintiff. *Netflix* at 10. It is not surprising that the Retirement Group omits this portion of the court's analysis in its submission as it cannot challenge that the Prosperity Group does indeed have the greatest financial interest in this litigation. As a *related* group of investment entities, not "unrelated" individuals, the Prosperity Group has clearly shown the Court that cohesion exists among its members.¹ In fact, while *supporting* the appointment of a group of related entities, like the Prosperity Group, *Netflix compels the denial* of the Retirement Group's motion. The Court in *Netflix* appointed two institutional investors as lead plaintiff because they demonstrated a pre-existing relationship -- a previous working relationship wherein they were able to attain a settlement for a class in another securities class action. *Netflix* at 12. Arkansas and Fresno, two completely unrelated entities, have failed to demonstrate to the Court "a pre-existing relationship which indicates their cohesion and ability to adequately control and oversee the litigation," and under *Netflix*, their motion must be denied. *Netflix* at 12.

In conclusion, the Retirement Group's competing motion for appointment as lead plaintiff, as well as their supplemental reliance on the *Netflix* decision, fail to rebut the Prosperity Group's status as the presumptive lead plaintiff. The Retirement Group's motion should be denied.

Respectfully,

LAW OFFICES

BERNARD M. GROSS, P.C.

BY:



DEBORAH R. GROSS

cc: All Counsel (via ECF)

¹*See* Dkt No. 10, Prosperity Group's Memorandum in Support of Motion for Appointment as Lead Plaintiff, at p.1 n.2 ("The Prosperity Group is a related group of investment entities"); Sinton Certification ¶¶2 and 3; Dkt. No. 33, Prosperity Group's Reply Memorandum, Declaration of Oliver Sinton, ¶¶ 4, 5